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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1964

No. 242

B. B. WOODSON, TRUSTEE IN BANKRUPTCY FOR STERLING R. DECKER AND MARY JANE DECKER, PARTNERS, t/a BERKELEY COMMUNITY BUILDERS,

Petitioner

against

GEORGE GILMER,

Respondent

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners filed their petition for a writ of cer-

tiorari to the United States Court of Appeals for the Fourth Circuit on July 2, 1964. A "reply" in the nature of a brief in opposition was filed on behalf of the Respondant on July 23, 1964. This reply brief is filed on behalf of petitioner B. B. Woodson, Trustee, etc.

The reply brief in the nature of a brief in opposition filed by the respondant at page 4 states as follows:

> "Counsel for B. B. Woodson, Trustee, conceded in his argument before the Circuit Court that this was a case where permission should properly be given, but insists Referee could not give permission voluntarily unless he was first asked, nor after institution of proceedings."

The argument heard by the United States Court of Appeals for the Fourth Circuit on November 9, 1963, in the matter of *B. B. Woodson, Trustee, etc. v. George Gilmer*, No. 9142, was recorded under the supervision of the Clerk of that Court and a copy of that recording tape has been carefully monitored by Counsel to petitioner B. B. Woodson, Trustee, etc.

Counsel to B. B. Woodson, Trustee, etc., *has not, did not* in argument before the Court of Appeals, and *does not* now say or concede that this is a case where permission of the Referee *should* properly be given. The statement quoted above from the brief in opposition is *not* correct.

Permission must be sought of the Referee in order that he may exercise his discretion after ascertaining the factual situation. "It (the bankruptcy court) has both the power and the duty to examine a claim adverse to the bankrupt estate to the extent of determining whether the claim is ingenuous and substantial." *Cline v. Kaplan, et al.* 323 U.S. 97, 65 S.Ct. 155, 89 L.Ed. 97 (1944) quoting

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from *Louisville Trust Co. v. Cominger* 184 U.S. 18, 22 S.Ct. 293, 46 L.Ed. 413 (1902).

Permission herein has never been requested, ascertainment of the adverse claim has never been made, nor has permission been granted.

CONCLUSION AND PRAYER

For the reasons set forth in the petition hereinbefore filed and for the reason set forth in this reply, it is respectfully submitted that the application for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit should be granted, to the end that this cause may be reviewed and determined by this Court; that the final order and judgment of the United States Court of Appeals for the Fourth Circuit may be reversed, and that petitioners be granted such other and further relief as this Court may deem proper.

Respectfully submitted,

B. B. Woodson, *Trustee*
in Bankruptcy Nos.
706 and 707

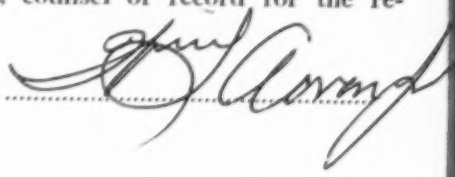
Dated: Charlottesville, Virginia
August 11, 1964

William Spencer Aaron, Jr.

Walker, Woodson and Aaron
242 Court Square
Charlottesville, Virginia

CERTIFICATE

I, William Spencer Aaron, Jr., do hereby certify that three (3) copies of the within Reply have been this 17th day of August, 1964, delivered to the offices of Carl E. Hennrich, Esquire, Court Square Building, Charlottesville, Virginia, counsel of record for the respondent.



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